App. E. IX-4

1928-29 (Land)

File No. 2-28

Serial Nos. 1-10

Previous References

Ex 55-25, 405
Jl 1/ 12.346

Later References

Land 150-28, 1-11
Ex Dep 89/32
Ex 107-ele 1-2

79

General and Revenue Secretariat.

Serial Nos. Ten

Part B for Oct 1928

SUBJECT

Civil & Criminal Excise Contractor M. A. K. Kesava Mudaliar.

GENERAL AND REVENUE SECRETARIAT.

NOTES.

Law File No. 201 1928

FILE HEADING.

Re Kesva Dundaba Excise case

From The Public prosecutor Bellary

No. 34 Dated 16-7-27, Received 18/7/27.

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

States that Excise Kesva Dundaba is desirous of C/M Station. It would be safe to submit to the jurisdiction of the Court of C. M. Station and obtain a decree and that prayer may be for declaration only or for consequential also as he may be instructed.

NOTES AND ORDERS.

Submitted. Regarding Court fee, the P. Pr is of opinion that the endorsable bond follows and is ancillary to the declaration. If the suit has to be filed for declaration only, he intends to alter the prayer portion. It is for orders whether

(i) he may submit to jurisdiction of C. M.

(ii) whether prayer should be for endorsable or for declaration merely.

NOTES—First Sheet.

WD 1881—GPB—80,000—1-8-21

Submitted for orders
Mellk
21.7.27
draft sent

(2) Ask P. Pr to see me
22/7.

General and Revenue Secretariat. | File No. | of 192

Serial No.

(3) I discussed the case with the P. PR.
He may file a declaratory suit in C & M
Station Bangalore.

8/8

draft & Sealed for approval
Sd/-
9.8.27

Regd-D) 8/8

(4) appd
Sd/-
11.8

To the Public Prosecutor Mre 11-8
Bangalore
DOP 9/4 of 13.8.27.
Returns the file & Papers.

NOTE—Contn. sheet.

WD 0321 -GPB-60,000-24-5-27

GENERAL AND REVENUE SECRETARIAT.

( )

NOTES.

File No.

FILE HEADING.

Suit against A. R. Kesava menon.

FROM

The Public Prosecutor, Bangalore

No. 285 Dated 22-5-28 Received

Diary No.	Enclos.	Spare copies	Serial No.

BRIEF ABSTRACT OF LETTER.

Sending report of the above case received by the P. P. from Mr. P. Lakshminarayan - Advocate.

NOTES AND ORDERS.

(S) A suit for recovery of the Govt: Promissory Note of the Value of Rs 6000/- was sanctioned by Govt Order No: Fl 2191-3/Ex: 55-25-5 dated 7-9-26. and in letter No: P 914/Kau dated 13-8-27, we declare suit was ordered to be filed in C H Ct Sh^x Dist:

NOTES—First Sheet.

42 p 28

App. F. III—2]

General and Revenue Secretariat. | File No. | of 192

Serial No.

It is now stated that when the plaint was presented, it was refused on the ground that Court fee paid was insufficient. The Court under the C.P.C ought to have received the plaint & then given time for payment of Court fee. However the P.Pr says that since the amount of Rs 50/- advanced for stamps to him proved insufficient, he did not file the suit.

(6) The plaint & copies & documents relating to the case are sent by the P.Pr.

Submitted
DDM
25/6/28

NOP 7164/Land dated 11-6-28 to P.Pr to come & discuss about this case

a P.Pr came on 30/6/28 & said that the case had to be fixed in Sept as the deft resides at Cape Sta.

(8) P.Pr had come on 30-6-28. He says that since the endorsement by a competent Court would give complete title in the notes to the book, & since the Respondent Sub Court has jurisdiction, it may be filed here, though the defendant resides at Cape Sta.

(9) The suit may be filed as for a declaration & consequential relief valued as per Sec 4 (v) (c) of the Court fee Regulation.

Submitted
DDM
2/7/28

(10) Ask P.Pr to file the suit at once

3/7/28

Draft put up
DDM
4/7/28

NOTE—Contn. sheet

WD 0824—GPB—60,000—24-5-27

11)

App. F. III [2]

General and Revenue Secretariate

File No. L of 1928.

Serial No.

To the P. R. Bangalore

No P 114 dt 5-7-28

Requests to file the suit in the case shown in the Court of the Subordinate Judge Mysore.

See
MM
10/7/28

Letter dated 13-2-1929 from P Pr Bangalore intimating that he has sent to the Ag. Com^r the 11 bonds & Rs 50/- requesting him to make arrangements with the PPr, Mysore for filing the suit in Mysore Sub Court —

(12) Perhaps the Ag. Com^r will make a reference to G.R. in the matter — the same may be awaited.

MM
16/4/29

(13) We may enquire of the Ag. Com^r how the matter stands. D/ft.

Law
16/4

Draft put up
MM
16.2.29 L.A.)

1.4) Issued
16/2
D Mr
18/2

To the Executive Comm
No P 4687 dt 21-2-29

General and Revenue Secretariat.

New File No. 2 of 192 8.

Serial No.	
2	Letter No. A 1-706/27-28 dated 15th March 1928 from Excise Com^r intimating that he is awaiting reply from PPr Bangalore as to whether the suit has to be filed in Mysore instead of in the C & R St^n.
	(15) The Suit was ordered to be filed in C & R St^n since the Deft resided there, but afterwards it was observed that the cause of action arose at Mysore & the endorsement executed by the Subst at Mysore would be effective to pass title in the Govt of India Securities to the Dewan of Mysore & Consequently the then PPr, Mr Ramaswami was asked to file the Suit in the Subst Mysore. Now that the PPr Mr Vijaya Deva feels it inconvenient to file the Suit in Mysore himself, he sent the record to the Excise Com^r to arrange with the PPr Mysore for the filing of the suit. If approved the Ex Com^r will be informed to send the papers etc to PPr Mysore who may be instructed to take early steps in the matter
	Nov 8.3.28 (L.R.) (16) yes. 11/3 11/3 Str^n 11/3.
3	Draft letter put up Nov 14.3.28 (L.R.)

NOTE—Contn. Sheet.

General and Revenue Secretariat. | Law File No. 2 of 1928.

AC 555

Serial No.	
3	To the Excise Com^r P 5235 / 16.5.28 intimating that the records were sent to PPr, Mysore for taking necessary action in the matter.
(18)	Draft to E.C. enquiring how the matter stands first up rmp 7.5.28 (for) 7/5 grew 7/5
	P 6830 dated 10.5.28 to Excise Com^r enquiring what action has been taken in the matter
Sno A rmp 11.5.28	
	Letter No: A1-706/27-28 from Excise Com intimating that in spite of repeated reminders, the PPr, Bangalore has not sent up the records for transmission to PPr, Shimoga.
(19)	L.R's note on P.V.B "Have a reference also ... and enquire" sd P.M. 17.5
(20)	It is seen that the records sent to the PPr, Bhge by the Excise Com^r were submitted to this office by Mr M. Ramaswami, late PPr.

NOTE—Contn. Sheet.

WD 01714—GPB—50,000—18-4-28.

Serial No.

with his report dated 22-5-28 and the same have somehow not been returned to him — If approved, they will now be returned to the Ex. Com^r Bangalore for immediate transmission of the same to the PPr, Salem — Draft sent up.

Roy
18/5/29

(2) Issues
D.M.
18/5

To
The Excise Com^r
P 7048 dated 18.5.29
Sending the records & calling for a report as to action taken.
Copy to PPr Salem
P.7048/Law

Letter No: A 1-706/27-28 dated 14th June 1929 from the Excise Com^r requesting sanction of Govt. for advancing Rs 4057/- to P.Pr mysore for filing the suit against A.R. Kesavamoorthiar.

(2) Evidently the PPr mysore values the suit for Rs 60000/- the face value of the Govt of India bonds which are required to be endorsed in favour of the Diwan. The papers are in possn of Govt having been deposited by the Contractor Mr A.R. Kesavamoorthiar. What is now to be paid

W.01684—GPR—30,000—20-4-29

Serial No.

for in the Suit is for a declaration of the Govt's title to the bonds and the consequential relief of getting the title forfeited by proper endorsement According to the letter of 5th July 1928 with the to Pr Bangalore (Hqrs U), the Suit has to be valued under sec 6 cl ii (c) of the Court Fee Rept, in which case even the property in dispute is not amount plaintiff can put any valuation on the relief sought and fee is leviable on on such valuation

(23) The Public Prosecutor perhaps may perhaps be instructed accordingly & to send in his revised bill of costs to this Office for sanction, with his Draft plaint to be filed Draft pus

Dop
28/6/28

L. R.)

WD 01684—GPB—30,000—20-4-29.

Serial No.	
	Letter no. H1-706/27-8 dated 4th July 29 from Excise Comr forwarding copy of a memo sent by PPr for opinion of A.G.
	Letter no 16 dated 11th July 1929 from PPr Mysore regarding the same.—
	(24). of the seven points raised in the memo (Flag I) sent by the PPr, the Excise Comr has requested the D.C. Mysore to furnish information on points 1, 2 and 3.
	25 The 4th point relates to the question whether the Currency officer in Br. India can recognise the decree of the Mysore Sub-Ct. in case it turns out to be ex parte against a Contractor. The Contract was entered into here & the deposit of the securities in question was made here. There is therefore no doubt that the cause of action arises in Mysore & the Sub Court has jurisdiction to entertain the suit against the Contractor, even though he resides in C & M Station.
	26 But the validity of an ex parte decree passed in Mysore against a British Indian subject, even though the cause of action arises in the State, is one that has to be decided by principles of Private International law and not those of the local law of Mysore. (39 Mad 733 at 736). The cases in which foreign judgment can be enforced are

Note—Contn. Sheet

WD 01684—GPB—30,000—20-4-29

General and Revenue Secretariat. | File No. of 192

Serial No.

enunciated clearly in Foote's Private Int. Law page 598 & 599. In 22 cal 222 (P. C). the Judicial Committee lay down the principle thus:- "In a personal action a decree pronounced in absentem by a foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself is by International Law an absolute nullity. He is under no obligation of any kind to obey it, and it must be regarded as a mere nullity, by the Courts of every nation & except (when authorised by special local legislation) in the Country of the forum by which it was pronounced".

It is thus clear that in case the Contractor Mr. Kesava Modliar does not subject himself to the jurisdiction of the Court, any the exparte decree that may be obtained, though valid in Mysore, can have no effect in British India and perhaps the Currency Officer there may not recognise it. & Mr Kesava Modliar can be said to subject himself to the jurisdiction of Mysore Courts if (i) he voluntarily appears in the Suit or (ii) if he has contracted to submit himself to such jurisdiction - Since the agreement under which he got the Excise Contract is not in the records, it is not known whether

NOTE—Contn. Sheet.

WD 01714—GPB—80,000—18-4-28

General and Revenue Secretariat.

Law File No. 2 of 1928.

Serial No.

he comes within the 2nd exception The PP also wants this agreement & the Excise Com says that he has asked the Deputy Com to furnish the same -

2) If however it is decided to file the suit in C & O St^n, it is doubtful if the suit would be within time - According to the draft Plaint prepared by Mr M. Ramaswami late PP Bangalore, the cause of action arose on 1-7- & even applying art 120, the suit would be barred since an govt cannot claim the benefit of the 60 years rule in C & O Stn. If approved the PP Mysore will be requested to get the entire records from the Dep. Mysore and send in his considered opinion after examining these points - Draft put up accordingly -

Sd/ 18.7.29

Sd/ D. M. 19(illegible) 19.7

6. To the Public Prosecutor, Mysore.

PS 27 dated 22.7.29

requesting him to examine the question whether deft has contracted to submit himself to Jurisdiction of Mysore Courts & if not whether the suit was in time under Por Indian Law

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

General and Revenue Secretariat. | Law File No. 2 of 1928.

Serial No.

Sus A
MP
23.7.29

Copy to Excise Comr. P 528/22.7.29

Letter No 45 dated 26th July 1929 from PPr, Mysore, stating that the agreement executed by Mr Reserve Auditor is not available in the D C's office & that the same must be with the Excise Comr & further intimating that he would send his opinion regarding the advisability of filing the suit in P & H Sh Police, in the Course of next week—

If the PPr may perhaps get the documents from the Excise Comr & furnish his opinion. Dft pt

MP
1.8.29
(L.R.)

Yes. 1/8

Issue Tin Dft

Mys

The Public Prosecutor, Mysore—

P 913/Law 2-28 dated 5/8/29 requesting him to get the docs from E.C. & furnish his opinion reg

Letter from PPr No 65 dt 5.8.29. forwarding copy of letter to Excise Com.

Serial No.

documents—

34 further report has to be awaited.

Letter No A1-706/27 dated 23rd August 1929 from the Excise Comr requesting that a search be made in the Law Records Office file, if the agreement is found to send it to PPr, Mysore.

35 whatever records there were in this file which were received from PPr, Bangalore, were returned to the Excise Comr with this office No. P7045 dated 18.8.29. (Para 20 supra)

Hag K

36 the agreement in question is not to be found in this office file—

Off put up

37 The Fr. Br. may also make a search & put up the agreement required if found.

Fr. Br.)

38 There are no papers in the Excise section now relating to M/s Keshava Mudaliar's case referred to

27/8

to the Hon. Br.)

Lists for perusal and orders

27-8-29

A reply may be sent

accordingly

WD 01684—GPB—30,000—20-4-29

Serial No.	
	To the Excise Comr in mysore P 1384 dated 31.8.29 informing him that the agreement is not in rect yet.
	Copy to PPr, mysore P 1385 / 31.8.29
7	Letter no 152 dated 17th Septr 1929 from PPr, mysore stating that in spite of a diligent search the agreement copy is not forth coming & suggesting a suit to be filed in Dt ct mysore. To. Kind refce is invited to nos in paras 25 to 29 supra - Since in any case a suit in Civil Sr appears to be barred by limitation, a suit may be filed at once in the Sub-court mysore as originally suggested in question. Perhaps the Currency Officer may be satisfied with an undertaking executed in pursuance of a decree obtained in the proper mysore Court. However no other remedy seems available just at present. Dft [redacted] 29/9/29 put up 20.9. (L.R.) J Agnes 7/10 P.M. 7/10
8	To the PPr mysore P 1791 25.9.29 requesting him to file the suit in mysore at once.

Note—Contn. Sheet

WD 01684—GPB—30,000—20-4-29

General and Revenue Secretariat

Law File No. 2

Serial No.	
9	Letter no 167 dated 25.9.29 Plr, mysore forwarding Copy of plaint for Scrutiny & advice The draft plaint seems to be ~~[illegible]~~ Subject to the following 1) In para 3, line 3 the date s shown to be 30-6-1921, and no 2) The reference to the agreement a at the time of the deposit of th Securities and its Subsequent b in the latter portion of para 3, perhaps be unnecessary in v the production of the Counterp mentioned in para 2 of the pla 3) Para 13 mentions the valu Suit for purposes of Court fee The Suit being for declaration Consequential relief. viz. Exec the proper endorsements Court to be paid according to Sec (c) of the Ct fee Regn (Vide / Supra) - under which the fee the ~~value~~ amount at which ~~of~~ the Consequential ~~fact~~ valued in the plaint 4) The value for purposes of jw mentioned as Rs 7466. 13.3 Amount due from the deft. perhaps be only the value of Submitted for orders Please find the draft

no. This has to be stated

Note—Contn. Sheet

25/9/29

WD 01882 C&G—30,000—20-4-29

Gen[redacted] and Revenue
[redacted]ecretariat

Law File No. 2

Serial No.	
	Off put up Dorp 1.10.29 Draft P. 1100 Gr 1/10
10	Do the Public Prosecutor Mysore P 1959 (1) returning the Draft plaint —
	Letter No: 204 dated 13.10.29 fr Mysore forwarding the plaint for + signature of the Chief Secy —
	The plaint incorporates all suggestions made in serial No 9
	It may kindly be marked to Secy for signature to the plaint as to Varalat —
	Dorp 16.10. to Chief Secy with Compts
	Signed RG 17/10/29 Returned to the
	Laws Secy with Compts

General and Revenue Secretariat | Law File No. of 1929

Serial No.

To The Public Prosecutor, Mysore
P 2124 (2) Dated 19.10.29
forwarding plaint duly signed by Chief Secy & requesting intimation of the further progress of the suit in

Sub B
Rop
25/10/29

Letter No: 217 dated 26.10.29 P.P.O, Mysore. intimating ~~the~~ institution of the suit against K. Madiah, on 26.10.29 has been regd as O.S. 35 of C.C. Court, Mysore.

Submitted for perusa

Rop
29/10
29/10

L.R.)

30/10
27/10

M. RAMASWAMI M.A.
BAR-AT LAW
PUBLIC PROSECUTOR,
BANGALORE DN.

No. 87 Cn. 2. Bangalore, 23.1.27

The Secretary,
Local & Legislative Department
Govt of Mysore,
Bangalore.

Sir,

I beg to submit draft plaint for filing a suit against A R. Kesava Mudaliar for obtaining an endorsement of the bonds deposited with the excise department as Security for fulfilling his Contract and to request you to approve of the Same. The costs are herein submitted

I beg to remain,
Sir
Your most obedient Servant
M Ramaswami
Public Prosecutor

Please advise
whether the question
of Court fee to be payable
on the plaint. Why not treat
this as declaratory suit
under Sec 50 (1) (a) Cl. Proc. 2.27

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 2/2/192 7

No. C 1876 - Ens

From

B. NAGAPPA, Esq., Bar-at-Law.,
Secretary to the Government of His Highness the Maharaja of Mysore,
Local and Legislative Departments.

To

The Public Prosecutor,

Bangalore.

Sir,

In returning herewith the draft plaint and the records in re. to suit against Mr. A.R. Keshava Mudaliar, I have the honor to request you to see me at once to discuss the question of court fee payable on the plaint. You may consider whether the suit may not be treated as a declaratory one.

I have the honour to be,

Sir,

Your most obedient servant,

for Secy. to Govt. L.L. Depts.

M. RAMASWAMI M.A.
BAR-AT-LAW
PUBLIC PROSECUTOR,
BANGALORE CN.

No 34
Cmc. 1 file

Bangalore 16-7-27.

390/P 82

To

The Secretary
Law Department
Bangalore.

Re Nesara Moorthy Excise case.

Sir

1677
16/7

I beg to invite your kind attention to paras 6 & 8 of the letter of the Excise Commissioner No C 1587-24 dated 12-8-26 and letter of the Comptroller No S.P. 3500 of 15-4-26 stating that the suit will have to be filed in the district Court of the station within whose jurisdiction the defaulter Nesara Moorthy is also residing. I think it would be safe to submit to the jurisdiction of the Court of the station and obtain a decree once for all.

With regard to the question of Court fee, I beg to invite your kind attention to the fact that the endorsation of the bond follows and is ancillary to the declaration of the right of Government to the bond under the contract, which right accrued only after the Contractor made default in the payment of the price. If you are however of the opinion that the suit may be framed for a declaration only, I shall alter the prayer portion to read

"to declare that the Plff is entitled ~~to have the bonds~~ to get the defendants' endorsation on the bonds or on the refusal to comply, ... the endorsation of the Court"

Thereafter the Court will direct the Collector to endorse the bonds

Yours obedient servant
M. Ramaswami

APP. F. VI. Gl.]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat
( )
the *192*

Date of issue 26/7/27

Signed by M. D.K.

List of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No

No. 1698

To

The Public Prosecutor,
Bangalore.

Sir Re Kesava Mudaliar case

I am directed to refer to your letter no 34 dated 16-7-27 from the Secretary Law Dept desiring that he may be seen by you in this connection regarding the future action to be taken in the case, at an early date

I have etc.

26/7 Secy to Govt.
Law Dept.

I have no hesitation to request you to kindly see me at an early date

Mark 23/7/27

over

WD 01265—GPB—31,000—24-12-25

APP. F. VI. Gl.]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section

File No.

Serial No.

No. 914 Secs

To

The P. P.

Bangalore.

General and Revenue Secretariat

( )

the 192

Date of issue 13/8/27

Signed by.....

Sir

Re Kasva Gowdaliars Excise case

I have the honour to State that a declaratory suit may be filed with the C. Jr. Station, Bangalore, ~~in the above matter~~ as directed. The file papers sent with your letter no 34 dt 16-7-27 is herewith returned.

With reference to your letter No 34 dt 16/7/27 regarding the above case

I have &c

Sd/-

10/8

Secy to Govt

Law Dept.

List of enclosures.....

Copied by..... 11/8

Examined by.....

Mala

9/8/27

Asst

10/8

over

WD 01265—GPB—31,000—24-12-25

P. S. LAKSHMINARASU, B.A., B.L.
Advocate, Chief Court, Mysore, and Resident's Court, Bangalore.

Office: BHADRAPPA BUILDINGS, CHICKPET, BANGALORE.

SHANKARPUR,
Basavangudi Post.

450.

Bangalore, 28th May 1928.

To

The Public Prosecutor,
Bangalore City.

Re: A.R. Kasava mudaliar

When the plaint in this case was entd in Contonment District Court the Head clerk refused receive it on the ground that the court paid is deficient. The Court fee has to be id on the amount sought to be covered and the suit can not be treated one for declaration - Hence the suit s not filed as the sum of Rs 50 paid advanced the Government for stamps on the plaint one for declaration is insufficient.

yours faithfully,

P.S. Lakshminarasu
advocate

No. P 7164/Law
of 11.6.1928.

Public Office,
Bangalore,
11th June 1928.

To,
The Public Prosecutor
Bangalore

Dear Sir,

Please see me tomorrow anytime during office hours so that we may discuss about what we have to do in Mr. Kesava Modliar's case.

Yours sincerely,

Legal Rr & Secretary to Govt.
Law Dept.

P. F. VI. Gl]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section

File No.

Serial No.

No. 114

General and Revenue Secretariat

( )

the 192

To The Public Prosecutor
Bangalore.

Date of issue 5/7/28

Signed by M' NS

Sir,

With reference to your letter No: 285 dated 22/5 may 1928 forwarding a report of the Case against Excise Contractor Mr. A. R. Kesavamoorthiar, I have the honour to request you to file the Suit at once ~~in suggested~~ in the Court of the Subordinate Judge, Mysore The Suit may be filed as for a declaration and Consequential relief valued at Rs 400 & Cl iv (c) of the Court fee Act.

List of enclosures.....

Copied by .....

Examined by .....

over

WD 0926—GPB—80,000—26-5-27

And you are required to send me a note ~~of the proceedings in the Court~~ immediately.

I have etc

Legal Remembrancer
& Secy to Govt Law
Delhi

Appendix F 6—1

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

the *192*

Date of issue..... 19/1/29

igned by .....

List of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No.

No. 1370

To

The Public Prosecutor
Bangalore.

Sir,

I am directed to ~~call~~ invite
your attention to this office
letter no: P 114 dated 5th inst
and to enquire what has been done
~~upon requesting you to file~~
in the matter of filing
~~the~~ Suit against Excise Const
Mr. A. R. Keshava Murthy in the
Court of the Subordinate Judge
Mysore ~~and to send a report~~ and to request that
~~immediately, and to take the~~
the action taken may kindly be
~~request you to report at~~
for the information of Govt
once ~~what has been done in~~
~~the matter~~ I have the

over

App. F. XI—4]

File No. 2.28

Serial No.

Sus, Regr. No. 6

Shall a reminder issue to

The P Pr Blue

for a reply to this Office No. 114, dated the 3.7.28

Subject.

Request him to file a suit in the case ~~and~~ ~~[redacted]~~ in the court of the Sub-Judge Tyasar & calls for a report

REMINDERS.

No.	Date
3720	17.1.29
[illegible]	2.[illegible].29

R^r put up

17.1.29

Is there no mention in this case in the eventuality return required?

18/1

Jan 1971

The returns for the quarter ending 31st Dec^r 28 do not mention this suit.

18/1/29

Observed

18/1

WD 01717- GPB—5,000—20-4-28

Another R^r put up, since no reply from the PP^r is as yet received.

11.2.29

11/2

Bangalore

3612/P 28 13.2.1929

From

The public prosecutor,

Bangalore

To

The Legal Remembrancer and Secretary

to Government, Law Department

Bangalore

Sir, In reply to your letters. no. P 4361/Law and no P. 4362 of the 12th instant I have the honour to state that the case against Mr. T. G. Govindaraja mudaliar was entrusted to Mr. P.S. Lakshminarasu, B.A., B.L., Advocate by my predecessor at it was blue filed in Contonment court. Mr. P.S. Lakshminarasu has Conducted the case and the G P note was duly endorsed in favour of the Dewan of Mysore by the Official of Receiver. The G P note was sent to the Excise Commissioner on 22/11/1928 and it has been acknowledged by him on the same date.

With regards to Mr. A.R. Kesava mudaliar's suit I am to inform you that I have sent the 11 bonds and Rs 50 to the Excise Commissioner

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE,

General and Revenue Secretariat

No. 1468 Law 7-28-1 Dated, Bangalore, 24/8/— 19th Feb. 192 9.

From

The Secretary to the Government of His Highness the Maharaja of Mysore,
Law Department.

To

The Excise Commissioner
in Mysore, Bangalore.

Sir,

I am directed to ~~request you to send an early report in the matter of~~ enquire what the position is filing a suit against Excise Contractor Mr. A.R. Kesava Mudaliar, for specific performance of the agreement to endorse the Government of India Securities deposited in connection with his arrack contract for -- 1920-21 in favour of the Dewan of Mysore, stands. An early reply is requested

I have the honor to be,
Sir,
Your most obedient servant,

For Secretary to Government
Law Department.

Postal Address:—
POST BOX No. 5.

Tel. Address:—
"EXCOMR," BANGALORE.

GOVERNMENT OF MYSORE.

In reply, refer to
No. A1-706/27-28.
Encls ...

EXCISE DEPARTMENT.

OFFICE OF THE EXCISE COMMISSIONER
IN MYSORE.

Dated, Bangalore, the...1st March..... 1929

FROM

A.K. Syed Taj Peeran, Esq., B.A.
Excise Commissioner in Mysore.

To

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government of His Highness the Maharaja of Mysore.
Law. ~~Financial~~ Department, Bangalore.

SIR,

With reference to your letter No.P.4687/Law.2-28 dated 21st February 1929 enquiring how the question of filing a suit against Mr.A.R. Keshava Mudaliar for specific performance to endorse the Government of India Pro-notes ~~deposited~~ deposited by him for his arrack contract of 1920-21 in favour of the Dewan stands, I have the honour to state that the Public Prosecutor, Bangalore Division, who was entrusted with this work returned the bonds in question with his letter No.To.359/28-29 dated 28th January 1929 (copy enclosed) stating that as the suit against the party has to be filed in Mysore, the Public Prosecutor, Mysore Division, may be addressed in the matter.

2. As Government had sanctioned in their order No.Fl.2191-3/Ex.55-25-5 dated 7th September 1926, the filing of a suit against the party in a competent Court of the Civil and Military Station, Bangalore, the Public Prosecutor, has been requested to intimate why the said suit should now be filed at Mysore and his reply is awaited.

I have the honour to be,
Sir,
Your most obedient servant,

G. Rudrappa

for Offg. Excise Commissioner
in Mysore.

Letter No.To.359/28-29 dated 28th January 1929 from the Public Prosecutor, Bangalore Division, to the Excise Commissioner in Mysore, Bangalore.

With reference to your official memorandum No.A1 706/27-28, I have the honour to state that the suit against Mr. Kesava Mudaliar has to be filed in - Mysore. The Public Prosecutor, Mysore Division, ; may be requested to file the suit there. I am here with returning bonds to the value of Rs.6,000/- and the sum of Rs.50/- in cash out of Rs.100/- advanced to this Office. As the case against Mr.T.G. - Govindaraja Mudaliar was closed, the Rs.50/- ~~ANNAMEE~~ advanced in this case is deducted in the final bill sent to your office on 21st January 1929. I - request you to acknowledge the receipt of the 11 ~~bem~~ 11 bonds and Rs.50/- in cash.

" C O P Y "

G. Rudrappa

For Excise Commissioner
in Mysore.

BR.

Appendix F G—1

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section Land

File No. 2-28

Serial No. 3

No. 5235

General and Revenue Secretariat

( )

the *192*

To

The Excise Commissioner in Mysore, Bangalore

Date of issue..... 16/3/29

Signed by ..... M'RS

Sir,

With reference to your letter No: A1-706/27-28 dated 1st march 1929 regarding a Suit to be filed against Excise Contractor Mr. A. R. Kesavamoorthy, I am directed to state that Since the Cause of action arose at Mysore and the endorsement Executed by the Sub Court at Mysore would be effective to pass title in the Govt of India Securi

over

st of enclosures.....

Copied by.....

Examined by.....

WD 0399—GPB—20,000—18-9-28

~~the~~ ~~Suit may conveniently~~
~~be filed in the Court of the~~
~~Subordinate Judge at Mysore~~
the records connected with the
Case may kindly be sent to
the Public Prosecutor Mysore
with instructions to take
early steps in the matter

I have etc

M[r] 15/3

for Registrar

Bangalore

MP
14.3.13

M[r] 15/3

~~Copy to Public~~

5296 / 82

Postal Address
POST BOX No

Tel. Address:-
"EXCOMR." BANGALORE.

GOVERNMENT OF MYSORE.

In reply refer to
No. A1-706/27-28.
Encls .....

EXCISE DEPARTMENT.

OFFICE OF THE EXCISE COMMISSIONER
IN MYSORE.

Dated, Bangalore, the 17th May 1929

FROM

S.P. Rajagopalachari, Esq., B.A.,B.L.,
Excise Commissioner in Mysore.

To

Mahadevayya, Esq., B.A., B.L.,
Legal Remembrancer
and *Secretary to Government of His Highness the Maharaja of Mysore.*
Law *Department, Bangalore.*

SIR,

With reference to your letter No.P.6830/Law dated 10th May 1929 enquiring the action taken in the matter of filing a suit against Excise Contractor, Mr.A.R. Kesava Mudaliar, I have the honour to state that the Public Prosecutor, Bangalore Division, to whom the connected records had been sent, has not returned the said records in spite of the marginally noted requisitions

1.	A1-706/27-28	dated 30th January 1929.	)
2.	"	4th March 1929.	(
3.	"	20th April 1929.	(

2. The Public Prosecutor, Mysore Division, will be addressed to take necessary action on receipt of the records from the Bangalor Division Public Prosecutor.

I have the honour to be,
Sir,
Your most obedient servant,

G. Ramappa

Assistant Commissioner
For Excise Commissioner in Mysore.
(Absent from Station.)

on similar terms for a further period of three years and 4 months in Exh.P.17. The transactions referred to in the evidence therefore fall under three periods namely

(i) the period during which the terms of the agency agreement were under negotiation and the draft agreement was pending namely the 1st September 1923 to the 10th June 2[illegible]

(ii) the period of currency of the first agreement Exh.P.14 after its execution (This agreement purports to be retrospective from 1-9-1923 but retrospective effect cannot be recognised in Criminal Law).

(iii) the period of currency of the second or renewed agreement Exh.P.17.

The withdrawals of sandal oil collections which form the subject-matter of the charge are subsequent to the execution, and during the currency, of the agreement Exh.P.14 dated 10th June 1925. The similar transactions adduced in evidence in this case under Section 15 of the Evidence Act fall under the first and third periods above referred to. There is also a striking coincidence between these different periods and the different methods adopted to transfer sandal oil collections to the credit of the agents in the Mysore Bank. These are shewn in the - - subjoined statement.

I. Similar transactions

1-9-23 to 10-6-25 Period of implied agency.

method of withdrawal • To meet drafts.

Date	Amount	Misappropriation by agents according to the agents' accounts as worked out by P.W.2 in C.C.
(1) 5-11-24	Rs. 5220	4341- 1- 4
(2) 29-7-24	Rs. 3000	1275- 7- 0
(3) 29-10-24	Rs. 6101-10-9	5553-15- 6

II. Transactions in the charge.

10-6-25 to 1-9-26. Period of agreement P.14.

Method of withdrawal - Telegraphic remittances

Date	Amount	Misappropriation as worked out by P.W.4 (Vide C3)
(1) 11-1-26	£ 1138-13- 5	£ 1126- 5- 2
(2) 27-2-26	£ 1500- 0- 0	£ [illegible]
(3) 3-5-26	£ 2000- 0- 0	£ 752-15-11
(4) 30-6-26	£ 5600- 0- 0	£ 7573- 9- 7

III. Similar transactions. Period of agreement P.17.

Method of withdrawal by drafts.

Date	Amount	Misappropriation by the Rasenallur Co.(as in C.7)
(1) 15-3-27	£ 3000	£ 15742-15- 6
(2) 10/26-11-27	£ 2500	not worked out but presumably above £ 12,000 as commission and expenses from 15-3-27 to 26-11-27 does not exceed £ 3000
(3) 21-2-28	£ 1250	£ 17039-14- 1 made up of £ 9164-14-1 of C.7 plus £ 7875-0-0 of P.68(C.7) Presumes that £ 8000 was recouped but out of £ 8000 a sum of £ 7875 was not a recoupment but was sandal oil money due to Government fraudulently shewn as a recoupment.
(4) 18-4-28	£ 2500	£ 22437-8-0 made up of £ 14562-8-0 of C.7 plus £ 7875 of P.68.

These calculations of the misappropriations of sandal oil money by the agents will be explained while discussing the evidence relating to each of the items. They are entered here only to have a general idea of the transactions with reference to the condition of the agency in the respective periods. Since the transactions during the period of the charge and subsequent to this period of charge are covered by the agreements ~~xxxxxx~~ executed - in writing between the parties (Exh.P.14 and P.17) it is only the conditions of the agency during the first of the three periods referred to above that have not been reduced to

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 192

Date of issue..... 18/5/29

Signed by ..... Pro

st of enclosures.....

Copied by .....

Examined by .....

Section

File No.

Serial No.

No. 7045 Revenue

Immediate

To Excise Contractor in mysore

The Public Prosecutor

Bangalore,

Sir,

With reference to your letter No. A1-706/27-28 dated 17th may 1929 regarding the Suit to be filed in mysore against excise Contractor Sri A. R. Kesavamudiar. I am directed to send herewith, Connected records received from the Public Prosecutor Bangalore for immediate transmission of the same to the Public Prosecutor,

over

WD 0899—GPB—20,000—18-9-28

instructions as indicated
in this Office letter P 5235/Law
2-28-3. dated 16th March 1929.

The action taken in the
matter may kindly be reported
in due course

P. 16/5

I have etc

Regal RV

May
18/5

7046

copy forwarded to Public
Prosecutor Rowalpore for
information —

Mrs.

Legal RV

It is understood
the whole question
being dealt with
in the Law Commission
Report) that which
is may be transferred
to the future
Act on

13.2.96

Yes.

A.
23/2/96

Postal Address :-
POST BOX No. 5.

Tel. Address :-
"EXCOMR," BANGALORE.

5897/P&28

GOVERNMENT OF MYSORE.

In reply, refer to
No. A1-706/27-28.
Encls .....

EXCISE DEPARTMENT.

OFFICE OF THE EXCISE COMMISSIONER
IN MYSORE,

Dated, Bangalore, the 14th June 1929.

FROM

S.P. Rajagopalachari, Esq., B.A., B.L.,
Excise Commissioner in Mysore.

To

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to Government of His Highness the Maharaja of Mysore,
Financial Department, Bangalore.

Sir,

Adverting to Government Order No.Fl.2065-6/Ex.37-26 dated 14th September 1927, sanctioning an advance of Rs.50/- to the Public Prosecutor, Bangalore Division, for expenses in connection with the filing of a suit against A.R. Kesava Mudaliar, in the Court of the District Judge, Civil and Military Station, Bangalore, to have the Government of India Pro-notes deposited by him endorsed in favour of the Dewan, I have the honour to state that the advance of Rs.50/- was drawn and sent to the Public Prosecutor, Bangalore Division, but he returned the amount stating that the suit against the defaulter had to be filed in Mysore. The Secretary to Government, Law Department, in his letter No.P.5235/Law.2-28-3 dated 16th March 1929 also stated that since the cause of action arose at Mysore, the endorsement executed by the Sub Court, Mysore, would be effective to pass title in the Government of India Securities and that the records might be sent to the Public Prosecutor, Mysore Division, for taking necessary actio in the matter.

2. On receipt of the records from the Law Department on 20th May 1929, the Public Prosecutor, Mysore, was requested to taken necessary action. He has, in his letter No.615/28 dated 3rd June 1929, requested for an advance of Rs.405/- -Rs.400/- towards institution fees and Rs.5/- towards incidental charges- for filing the suit. -

obtained for advancing this amount to the Public Prosecutor, - Mysore Division.

3. The expenditure will be met from " 3 Excise - 2 District Executive Establishment - Contingencies".

I have the honour to be,
Sir,
Your most obedient servant,

G. Andrappa

Assistant Commissioner
For Excise Commissioner in Mysore.
(Absent from Station.).

Appendix F G--1

SUBJECT.....

.....

.....

Section Law

File No. 2 of 1928.

Serial No. 4

No. P. 233

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecutor

Mysore

Date of issue 10.7.29

Signed by M. P. M.

Sir,

I have the honor

I am to invite ~~you~~

~~a~~ to your letter No: 615

dated 3rd June 1929 to

Excise Commissioner in re

requesting ~~for~~ an adv

of Rs 40/- for filing a

against Excise Contract

Mr A. R. Kesava mudliar,

the Sub Court Mysore fo

~~for~~ ~~a~~ endorsation of the

Government of India Loc

over

List of enclosures.....

Copied by.....

Examined by.....

WD 0399—GPB—20,000—18-9-28

~~in favour of the Government~~
deposited with the Government,
and to ~~state that~~ State that ~~request you~~
~~to explain why~~ a Court fee
of Rs 400/- is unnecessary, since
the suit ~~can be~~ is one ~~for~~.
~~Declaration~~ a falling under
Sec 4 cl iv (c) of the Court
Fees Regulation and ~~can therefore~~
the fee therefore depends upon
the valuation of the relief
in the plaint

I am therefore ±
You to send ~~to~~ me at once
~~of~~ a draft plaint
and also ~~for~~ a revised bill
of costs for obtaining due sanction
of Government. ~~in the matter~~.

I have etc
M,

Compl R/

y/to Secy Govt in mysore no. 234 of 10.7.29
with reference to his letter no A1-106/27-8
dated 14th June 1929.

Le 4

Postal Address :-
POST BOX No. 5.

Tel. Address :-
"EXCOMR," BANGALOR

GOVERNMENT OF MYSORE.

In reply, refer to
No. A1-706/27-28.
Encls Records.

EXCISE DEPARTMENT.

OFFICE OF THE EXCISE COMMISSIONER
IN MYSORE,

Dated, Bangalore, the....11th.....July... 192

FROM

S.P. Rajagopalachari, Esq., B.A., B.L.,
Excise Commissioner in Mysore.

To

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government of His Highness the Maharaja of Mysore,
Law ~~Finance~~ *Department, Bangalore.*

Sir,

With reference to your letter No.P.5235/Law.2-28-3 dated March 1929 directing me to instruct the Public Prosecutor, Mys Division, to take steps to file a suit against Mr.A.R. Keshava Mudaliar to get his bonds endorsed in favour of the Dewan, I h the honour to forward, herewith, copy of his note received wit letter No.5 dated 3rd July 1929.

2. The Deputy Commissioner, Mysore District, has been written to, to furnish information on points 1, 2 and 3. Rega ing the remaining points, I request that the opinion of the Le Remembrancer may kindly be obtained and furnished to me at a early date.

3. The connected records are, herewith, enclosed for reference and return.

I have the honour to be,
Sir,
Your most obedient servant,

Assistant Commissioner
For Excise Commissioner
in Mysore.(Absent fr
Station).

Instructions of the Excise Commissioner are solicited on the following points:-

1. Original stamped agreement and the forfeiture certificate referred to in the letter of the Mysore Deputy Commissioner dated 17-5-1926 (page 28 in the file) are not to be found among the papers sent. The draft plaint para 3 (page 43) refers to "an agreement dated about 13-7-1920" indicating that the agreement of the defaulter was not before the Advocate at the time of the drafting of the plaint. The agreement is the document on which the suit has to be based. I must see it before drafting the plaint.

2. Date and circumstances of the order of forfeiture are not available. The order is to be filed along with the plaint.

3. More details for the claim of Rs.7468-13-3 (page 3) are required. It will be necessary to know the total amount due up to date by the defaulter and also the amount of interest accrued due on the bonds.

4. The suit was at first intended to be filed in the - District Court of Bangalore (A British Court). Casue of action no doubt arose in the Mysore City. But the suggestion given by the Currency Officer (page 24) is that the Burbar should obtain the orders of a competent Court for realising the amount due on the bonds. In the event of the defaulter not submitting to the jurisdiction of the local Sub-Judge, the decree passed by him - would be an ex-parte foreign decree. It is necessary to know if the Currency Officer would recognise such a decree as a valid and binding order.

5. The Government sanction obtained (page 36) was for - filing a declatory (declaratory) suit (Section 42 of the S.R. Act). But the plaint prepared by the Public Prosecutor of Bangalore is for specific performance of contract, on the analogy of clause and illustration (d) of Sec. 12 S.R. Act.

6. The decree that we may obtain will have no reference to the several defects pointed out in the Comptroller's letter (page 20). Unless these defects are also cured, it may not be easy to realise the securities.

7. In the communication of 2-6-1929 my predecessor in - Office has requested that a sum of Rs.400/- be kept at his disposal for institution fee. Till the plaint is prepared and duly approved by the Government, it is not possible to fix the exact amount of Court fees payable on the plaint. If the suit is - merely for a declaratory decree, the Court fee would only be - Rs.50/-, for the Sub-Court and Rs.200/- for the District Court. In case the suit is for the recovery of the arrears due by the defaulter the Court fee will be according to the ad-valorem scale. If the suit be for specific performance of contract, the value of the claim will have to be fixed according to the value of the relief sought.

The Excise Commissioner may be pleased to enlighten me on the points raised above. He is furhter requested to make - suitable references, if necessary, and obtain the opinions of th Legal Remembrancer and the Comptroller.

Sd/ K. Ramaswamaiya,
Public Prosecutor, Mysore Division.

" C O P Y "

For Excise Commissioner
in Mysore.

POST BOX No. 5.

Tel. Address:—
"EXCOMR," BANGALORE

GOVERNMENT OF MYSORE.

EXCISE DEPARTMENT.

In reply, refer to
No. A1-706/27-28.
Encls ...four...

295
7f

OFFICE OF THE EXCISE COMMISSIONER
IN MYSORE,

Dated, Bangalore, the....11th.....July... 1929

GENL. & REV. SEC.
15 JULY 1929
FINANCIAL BRANCH

FROM

S.P. Rajagopalachari, Esq., B.A., B.L.,
Excise Commissioner in Mysore.

To

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to Government of His Highness the Maharaja of Mysore,
Financial Department, Bangalore.

Sir,

In continuation of my letter No.A1-706/27-28 dated 14th June 1929 requesting the sanction of Government for advancing a sum of Rs.400/- to the Public Prosecutor, Mysore Division, for filing a suit against A.R. Keshava Mudaliar, I have the honour to forward, herewith, copy of my letter No.A1-706/27-28 dated 11th July 1929 with that of its enclosure to the Secretary to Government, Law Department.

C.R with compliments
answer of mudaliar case
12-7-29

I have the honour to be,
Sir,
Your most obedient servant,
G Ruthappa

Assistant Commissioner
For Excise Commissioner
in Mysore.(Absent from Station).

BR.

Tel. Address :—
"EXCOMR," BANGALORE.

GOVERNMENT OF MYSORE.

In reply, refer to
No. A1-706/27-28.
Encls .....

EXCISE DEPARTMENT.

OFFICE OF THE EXCISE COMMISSIONER
IN MYSORE,

Dated, Bangalore, the.....11th.....July.. 192

FROM

S.P. Rajagopalachari, Esq., B.A., B.L.,
Excise Commissioner in Mysore.

To

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government of His Highness the Maharaja of Mysore,
Law [redacted] *Department, Bangalore.*

Sir,

With reference to your letter No.P.5235/Law.2-28-3 dated 16t March 1929 directing me to instruct the Public Prosecutor, Mysor Division, to take steps to file a suit against Mr.A.R. Keshava Mudaliar to get his bonds endorsed in favour of the Dewan, I hav the honour to forward, herewith, copy of his note received with letter No.5 dated 3rd July 1929.

2. The Deputy Commissioner, Mysore District, has been written to to furnish information on points 1, 2 and 3. Regard ing the remaining points, I request that the opinion of the Lega Remembrancer may kindly be obtained and furnished to me at a ver early date.

3. The connected records are, herewith, enclosed for reference and return.

I have the honour to be,
Sir,
our most obedient servant,
Sd/ S.P. Rajagopalachari,
Excise Commissioner
in Mysore.

' C O P Y "

Excise Commissioner
in Mysore

Instructions of the Excise Commissioner are solicited on the llowing points:-

1. Original stamped agreement and the forfeiture certificat referred to in the letter of the Mysore Deputy Commissioner dated 17-5-1926 (page 28 in the file) are not bo be found among the - papers sent. The draft plaint para 3 (page 43) refers to"an agre ment dated about 13-7-1920" indicating that the agreement of the defaulter was not before the Advocate at the time of the drafting of the plaint. The agreement is the document on which the suit has to be based. I must see it before drafting the plaint.

2. Date and circumstances of the order of forfeiture are not available. The order is to be filed along with the plaint.

3. More details for the claim of Rs.7468-13-3 (page 3) are required. It will be necessary to know the total amount due up to date by the defaulter and also the amount of interest accrued due on the bonds.

4. The suit was at first intended to be filed in the - District Court of Bangalore (A British Court). Casue of action no doubt arose in the Mysore City. But the suggestion given by the Currency Officer (page 24) is that the Burbar should obtain the orders of a competent Court for realising the amount due on the bonds. In the event of the defaulter not submitting to the jurisdiction of the local Sub-Judge, the decree passed by him - would be an ex-parte foreign decree. It is necessary to know if the Currency Officer would recognise such a decree as a valid and binding order.

5. The Government sanction obtained (page 36) was for - filing a declatory (declaratory) suit (Section 42 of the S.R. Act). But the plaint prepared by the Public Prosecutor of Bangalore is for specific performance of contract, on the analogy of clause a illustration (d) of Sec. 12 S.R. Act.

6. The decree that we may obtain will have no reference to the several defects pointed out in the Comptroller's letter (page 20). Unless these defects are also cured, it may not be easy to realise the securities

7. In the communication of 2-6-1929 my predecessor in - Office has requested that a sum of Rs.400/- be kept at his disposal for institution fee. Till the plaint is prepared and duly approved by the Government, it is not possible to fix the exact amount of Court fees payable on the plaint. If the suit is - merely for a declaratory decree, the Court fee would only be - Rs.50/-, for the Sub-Court and Rs.200/- for the District Court. In case the suit is for the recovery of the arrears due by the defaulter the Court fee will be according to the ad-valorem scale. If the suit be for specific performance of contract, the value of the claim will have to be fixed according to the value of the relief sought.

The Excise Commissioner may be pleased to enlighten me on the points raised above. He is furhter requested to make - suitable references, if necessary, and obtain the opinions of the Legal Remembrancer and the Comptroller.

Sd/ K. Ramaswamaiya,
Public Prosecutor, Mysore Division.

" C O P Y "

For Excise Commissioner
in Mysore.

Office of the Public Prosecutor

Mysore, Dated 12th July 29.

No. 16

From

The Public Prosecutor,

MYSORE.

To

The Secretary of the Government of

H. H. the Maharaja of Mysore, Law Department,

Sir,

In acknowledging the receipt of your letter No.P.233/Law.2-28 dated 10-7-29, I have the honor to enclose for your kind persual, copies of my letter and the memo of the instructions submitted to the Excise Commissioner on 3-7-29. Draft plaint will be prepared and submitted for approval as soon as the required particulars are furnished by the Excise Commissioner.

I have the honor to be

Sir,

Your most obedient servant,

Office of the Public Prosecutor

Mysore Division,

Dated, 3rd July 1929.

From

K. Ramaswami Ayya, Esq., B.A., B.L.,

Public Prosecutor, Mysore Division.

To

The Excise Commissioner in Mysore,

B A N G A L O R E.

Subject:- Action to be taken to realise the securities deposited by A. R. Kesva Mudaliar.

Sir,

With reference to the above and in continuation of this office letter No.615 dated 2-6-29 in reply to your letter No.A/① - 706-27 dated 22-5-29, I have the honor to enclose a memo of instructions on the several points raised therein. Information is required on all the points before I proceed to draft the plaint and as the subject has already been treated urgent, an early reply is requested.

The eleven bonds sent are retained here and the file of correspondence containing 44 pages of papers are herewith returned for easy reference.

I have the honor to be

Sir,

Your most obedient servant,

(Sd) K. Ramaswami Ayya.

" T R U E C O P Y"

K Ramaswamy

M E M O.

Instructions of the Excise Commissioner are solicited on the following points:-

(1) Original stamped agreement and the forfeiture certificate referred to in the letter of the Mysore Deputy Commissioner dated - 17-5-1926 (page 28 in the file) are not to be found among the papers sent. The draft plaint, para 2, (page 43) refers to " an agreement dated about 13-7-1920" indicating that the agreement of the defaulter was not before the advocate at the time of the drafting of the plaint. The agreement is the document on which the suit has to be based. I must see it before drafting the plaint.

(2) Date and circumstances of the order of forfeiture are not available. The order is to be filed along with the plaint.

(3) More details for the claim of Rs.7468/13/3 (page 3) are required. It will be necessary to know the total amount due up to date by the defaulter and also the amount of interest accrued due on the bonds.

(4) The suit was at first intended to be filed in the District Court of Bangalore (A British Court). Cause of action no doubt - arose in the Mysore City. But the suggestion given by the currency officer (page 24) is that the Durbar should obtain the orders of a competent court for realising the amount due on the bonds. In the event of the defaulter not submitting to the jurisdiction of the - Local Sub-Judge the decree passed by him would be an ex-parte foreign decree. It is necessary to know if the Currency Officer would recognise such a decree as a valid and binding order.

(5) The Government sanction obtained (page 36) was for filing a declaratory suit, (section 42 of the S.R.Act). But the plaint prepared by the Public Prosecutor of Bangalore is for specific

performance of contract, on the analogy of clause and illustration, (D) of section 12 S.R. Act.

(6) The decree that we may obtain will have no reference to the several defects pointed out in the Comptroller's letter.(page 20). Unless these defects are also cured it may not be easy to realise the securities.

(7) In the communication of 2-6-29 my predecessor in office has requested that a sum of Rs.400/- be kept at his disposal for - institution fee. Till the plaint is prepared and duly approved by the Government it is not possible to fix the exact amount of court fees payable on the plaint. If the suit is merely for a declaratory decree the court fee would only be Rs.50/- for the Sub Court and - Rs.200/- for the District Court. In case the suit is for the - - recovery of the arrears due by the defaulter the court fee will be according to the ad-valorem scale. If the suit be for a specific performance of contract the value of the claim will have to be fixed according to the value of the relief sought.

The Excise Commissioner may be pleased to enlighten me on the points raised above. He is further requested to make suitable -* - references, if necessary, and obtain the opinions of the Legal - Remembrancer and the Comptroller.

(Sd) K. Ramaswami Ayya,

" T R U E C O P Y"

Appendix F G –1

SUBJECT.....

.....

.....

Section: Law

File No. 2 – 28

Serial No. 6

Diary No. of letter replied to.....

No. 527 Revenue

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecutor

Mysore

Date of issue 22/7/29

Signed by .....

Sir,

With reference to your letter No. 16 dated 12th July 1929 regarding the Suit to be filed against Excise Contractor Mr. A.R. Keshavamodliar, I have the honour to request you to examine the whole of the Connected records in the Deputy Commissioner's Office Mysore and report whether Mr Keshavamodliar has in any way

over

List of enclosures.....

Copied by .....

Examined by.....

contracted ~~himself~~ to submit himself to the jurisdiction of the Mysore Courts, in which case the judgment obtained in the Mysore Sub Court will have to be recognised by the Currency Officer under the principles of Private International Law.

~~If this found~~ If this is found in the negative, I am to request you to kindly examine the question whether the suit if brought in the ~~Civil~~ District Court, City of Station Bangalore, would be within the time prescribed by the Indian Limitation Act, 1908.

The file of correspondance containing 44 pages of papers sent with your letter ~~no~~. dated 3rd July 1929 the Excise Comr, is herewith returned.

The matter may be treated as very urgent.

I have etc

D. M.
Legal Adv

14/7

Copy to Excise Comr with reference to his letter No A 1-706/27-28 dated 11th July 1929

D. M.
Legal Adv

WD 546—GPB—50,000—19-3-8

1930.

From
The Public Prosecutor.
Mysore division

To
The Secretary
to the Government
of H.H. the Maharaja
of Mysore, Law Depart-
ment, Bangalore

Dated 26.7.29.

Despatched

Received

General No.

No. 45

Enclosure No.

Sir,

In compliance with your letter no P.527. Law 22-8-6 dated 22.7.29, I have the honour to report that I have examined the records in the Deputy Commissioner's office of Mysore, relating to the excise conviction of Mr A.R. Kesavamudiar.

The agreements and the forfeiture certificate required for preparing the plaint are not available in the records

From the registers maintained in the Office it is gathered that the afore-said two documents were despatched to the Excise Commissioner on 17th May 1926.

The agreement said to have been executed by Sri Keva Nundiah was the usual formal agreement to abide by the rules of the Excise Department and Conditions of sale.

The question whether the contemplated suit may be filed in the District Courts of C. M. Station, Bangalore will be duly considered and Opinion submitted in the Course of next week.

I have the honour to be,
Sir,
Your most Obedient Servt

K. Lakshmana Rao
Public Prosecutor
Mysore Dn

Appendix F G—1

SUBJECT.....

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Section Secret

File No. 2-28

Serial No.

No. 913

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecutor

Cuddalore

Date of issue 5/8/29

Signed by

Sir,

With reference to your letter No: 45 dated 26th July 29 regarding the Suit against Mr A.R. Kesava-modiar, I have the honour to request you to get the documents necessa from the Excise Commissioner and furnish the informat asked for in this office letter P527/Land 2-28-6 dated 22nd July 1929, at an early

st of enclosures.....

Copied by.....

Examined by.....

over

WD 0399—GPB—20,000—18-9-28

Date.

Maveek

Jersey

Dont
1.8.
Jan
48

1249
P 829

WD 546—GPB—50,000—4-9-28

1929-30.

From

The Public Prosecutor,
Mysore Division
Mysore.

To

The Excise Commissioner in Mysore,
Bangalore.

Dated 3rd August 1929.
Despatched
Received
General No.
No. 65

Enclosure No.

Sir,

Suit against A.R. Kesava Modlair:-

With reference to your letter No. A.1 706/27-28 dated 26/27th July 1929 addressed to the Deputy Commissioner of Mysore, I have the honour to state that neither of the two counterpart agreements referred to therein is the agreement executed by A.R.Kesva Modaliar at the time of his pledging the Government Promissary notes of Rs.6000/- with the Deputy Commissioner. The fact of the pledge would be found in that agreement if it be available. Though according to the Government securities Act, property in the securities does not pass to the pledgee by mere delivery unaccompanied by endorsement, we can enforce the agreement to endorse

endorse under Section 42(a) of the Specific Relief Act.

It is traced to have been despatched to your off..., from the Deputy Commissioner's office on 17-5-1926, along with the G.P.notes.

I therefore request that a thorough search be made in your office for the missing agreement and if found, that it may be sent to me immediately.

I have the honour to be,

Sir,

Your most obedient s.....

Public Prosecutor,
Mysore Division.

No 65/29-30

Copy of the above is submitted to the Secretary to the Govt of H H the Maharaja of Mysore, Law Department, Bangalore, for information, with reference to his letter No P 527-dated 22.7.29.

Dated 5-8-29

Public Prosecutor
Mysore Division

Postal Address:—
POST BOX No. 5.

100423

Tel. Address:—
"EXCOMR," BANGALORE.

In reply, refer to
No. A1-706/
Encls .nee.

OFFICE OF THE EXCISE COMMISSIONER
IN MYSORE,

Dated, Bangalore, the 13rd August 192 9

S. P. Rajagopalachari, Esqr., B.A., B.L.,
Excise Commissioner in Mysore.

P. Mahadevayya, Esqr., B.A., B.L.,
Legal Remembrancer &
Secretary to Government of His Highness the Maharaja of Mysore,
Law *Financial Department, Bangalore.*

Subject:- Filing of a suit against Excise defaulter A. R. Keshava Iudaliyr.

In continuation of this office letter No. A1-706/27-28 dated 1 1929 on the above subject, I have the honour to state that the Deputy Commissioner, Mysore District, who was requested to forward t original agreement executed by the party, reported in his No.K.B.1. dated 12th July 1929 that the agreement in question was sent along with the other records and the bonds on 17th May 1926. It was see from this office references that the entire records inclusive of th bonds and the original agreement were sent to the Public Prosecutor Bangalore Division, on 26th October 1926 and he was, therefore, requested in this office No.A1-706/27 dated 14th August 1929 (copy en closed) to make a thorough search for the agreement. In reply he states in His letter No.69/29-30 dated 18th August 1929 that the ag ment is not forthcoming in his office and that a search may be made in the Law Secretariat also as the records passed through your offi

2. Under these circumstances, I request that a search may be ca to be made in your office files and the agreement, if found, return for transmission to the Public Prosecutor, Mysore Division.

to writing the conditions of the agency during this peri have to be determined as laid down in Section 187 of the Contract Act. "An authority (or agent) is said to be - implied when it is to be inferred from the circumstances case) and things spoken or written, or the ordinary cour of dealing may be accounted circumstances of the case." Exh.D.143 dated 20-11-23 is a letter sent by the Director of sandal oil factories to the agents explaing how the - transactions A should be accounted for vide also Cl.3 of Exh.P.1 sent by agents to the Government and the returns - furnished to the Director every month as during this period. Weekly deliveries and remittances were being caused to the Director during the period. The banking arrangements made were in conformity with clause 6 of the draft agreement sent to the agents by Government and forwarded by Mr.Varadhamania to Mr.Sitharamachar with his letter Exh.D.22 dated the 31st. October 1923. There can thus be no doubt that in respect of accounting for transactions receiving moneys and remitting them to Government the conditions of the agency from 1-9-23 to 10-6-25 were the same as those incorporated in the subsequent agreement Exh.P.14.

The conditions of agency.

The terms of the agreement Exh.P.14 and the legal relationship created between the parties thereby is a subject of keen content in this case and that aspect of the matter will be taken up at a later stage in the course of this - judgment. The conditions of the agency will be referred to now only to follow the arrangements made by the agents for the business of the agency. The most important conditions of the agreement are the following:-

(1) The oil will be consigned at the cost of the Govern ment and delivered to the agents at the chief - - distributing centres, dock-charges being also borne by Government(Clause 3).

the distributing centres the cost of warehousing, insurance and distribution being borne by the agents (Clause 4).

(3) the agents should maintain for the inspection of the principal, books of account relating to (i) receipts, deliveries and balance of stock of oil, (ii) the realisation prices, and recoveries in respect of individual sales and payments to Government. The agents should also render monthly accounts to the Director in the prescribed manner regarding stocks, sales, collections, remittances and outstandings (Clause 5).

(4) the agents should credit to the account of the Government with Coutts & Co. without any delay and not less than once a week, all sale proceeds received on behalf of the Government less the commission and expenses due to the agents (clause 6).

(5) the agents should do all acts necessary to develop the market for sandal oil and should not do anything detrimental to the interests of the principal(clause 7).

(6) the agents shall not sell below the minimum prices to be fixed by the Director but should obtain for the principal the highest prices possible (clause 8).

(7) the agents shall be held responsible for all oil delivered to them and they shall effect satisfactory insurance against all risks whatsoever. (clause 9).

(8) the agents shall be liable for all monies recoverable on sales - credit to buyers shall be at the risk of the agents who should make good bad debts whether recovered or not such amounts should be credited to Government within six months (clause 10).

(9) the agents shall be entitled to a remuneration of 3½ per cent on the sale proceeds realised by them.

Letter No.A1-706/27 dated 14th August 1929
from the Excise Commissioner in Mysore, Bangalore, to the
Public Prosecutor, Bangalore Division.

Subject:-- Filing of a suit against
A.R.Keshava Mudaliar, an Excise
defaulter.

I have the honour to state that in connection with the filing of a Civil Suit against A. R. Keshava Mudaliar, the Public Prosecutor, Mysore Division, requests that the original agreement executed by the party may be sent. It is seen from this office file that the agreement in question along with the bonds and the records was sent to your office with this office letter No.G.C.27-25 dated 26th October 1926, but the records (35 papers only) were returned with your letter No.68 dated 25th August 1927 for getting the plaint and Vakalat signed and for sending a sum of Rs.50/- for expenses, but the bonds and the agreement were retained in your possession. The plaint, Vakalat and the file of records together with the sum of Rs.50/- were again sent to you with this office letter No.A1-706/27 dated 1st October 1927 but the 11 bonds and Rs.50/- without the agreement were returned with your No.To.359/28 dated 28th January 1929 for filing a suit at Mysore and the file of records containing 35 papers were subsequently received with No.P.7045/Law dated 18th May 1929 from the Law Secretary.

2. As the agreement executed by the party is required by the Public Prosecutor, Mysore Division, for filing a suit at Mysore, and the same is not forthcoming either in this office records or the Secretariat, I request that a thorough search may be made in your office and the agreement in question returned to this office immediately.

"C O P Y"

Excise Commissioner in Mysore.

Appendix F G—1

SUBJECT.....

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.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

Date of issue..... 31/8/27

Signed by..... M. N. S.

List of enclosures.....

Copied by.....

Examined by.....

Sectio

File N

Serial No.

No. 1384

Inte

To

The Excise Commissioner in
mysore, Bangalore

Sir,

With reference to your letter no: A1-706/27 dated 23rd August 1929 regarding the original agreement executed by Excise Contractor Mr. A.R. Keswa Modliar, I am directed to invite ~~your~~ reference to this Office letter no: P7045/Law dated 18-5-29, with which all the records received from the Public Prosecutor Bangalore were returned to you & am to state that the agreement in question is not ~~to be~~ [illegible]

Section

File No.

Serial No.

No.

To

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Secy
Re ~~Affairs~~ files on the subject

I have etc

for Secy

1385

Ppr, myscre,

ference to this letter

dated 5th august 1929.

Diary No. of letter replied to.....

(temporal and Revenue Secretariat

( )

the 1929

Date of issue.....

Signed by.....

Distribution

Law-96-15 HR 1 of 2

WD 546—GPB—50,000—4-9-28

192

From

The Public Prosecutor,
Mysore Division
Mysore

To

The Secretary to the Govt of
His Highness the Maharaja of
Mysore, Law Department, Bangalore

Dated 17th September 1929

Despatched

Received

General No. 1512
No.

Enclosure No.

Sir,

With reference to your
letter no P 527. Law 2-28
dated 22-7-29 I have the
honour to report that in
spite of diligent search
the agreement executed
by Mr A.R. Keshava Hode
at the time of his deposit
G.P. notes of the value of
Rs 6000-0-0 with the
Deputy Commissioner
Mysore, has not been
traced. Correspondence
the subject shows that
was last sent to the
Public Prosecutor, Ban
Division, but was
returned with the

records and G.P. notes to your office

Although the agreement is not forthcoming it can be safely presumed that Mr Keshava Modaliar has not contracted to submit himself to the jurisdiction of the local Courts. Agreements usually taken from contractors while depositing G.P. notes by way of security do not contain any such precautionary clause. I have examined the question suggested in para. 2 of your letter. Attention is invited to Section 11. of the Indian Limitation Act and the notes thereon in Rustomjee's Limitation Act. 4th edition. PP. 112.

Mr A.R. Keshava Modaliar was a Non-Mysorean. He entered into a Contract with the Government of Mysore in 1920. The usual period for filing a suit therein would be three years from the date on which the Contract was broken. When the suit is to be brought before a foreign Court our Government will be treated as an ordinary Citizen governed by Lex Fori in all questions of limitation for filing suits. In these circumstance I may be permitted to suggest that a Suit for Specific Performance of Contract to endorse G.P. notes be filed under Sec. 12. Specific Relief Act in the Court of the District Judge Mysore. The Court fee will be Calcu

on the Scale indicated in Article 11, Schedule II of the C. P. Regulation. In all likelihood there will be a decree. Then in case the decree should be an Ex parte one a suit on foreign judgment may be filed in the British Indian Court within whose jurisdiction the defendant is residing. He can resist in such a suit plead that the decree is invalid for want of jurisdiction

The Opinion tendered above subject to Correction. I await further instructions on the subject.

I have the honour to be,
Sir,
Your most obedient servant

Public Prosecutor
Mysore Division

Appendix F G—1

SUBJECT.....

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Section Land

File No. 2 of 28

Serial No. 6

Diary No. of letter replied to.....

No. 1791

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecr
Mysore

Date of issue..... 25/9/29

Signed by.....

Sir,

With refer
letter No 152 dated 17th
September 1929 regarding
the Suit agt Excise
Contractor Mr A. R. Ras.
Modliar, I am to reque
you to take immediate
steps to file the Suit in
the proper Court in Mysor
which appears to be the
Sub Court and not the

List of enclosures.....

Copied by.....

Examined by.....

The draft plaint may as usual be sent ~~here~~ home for approval.

week.

Legal Adv

MF
20/4/77

Copy to Excise Comr for information

16th page

WD 546—GPB—50,000—4-9-26

Loan 2-26-9

192 9

From
The Public Prosecutor
Mysore Division

To
The Secretary
to the Government of
H.H. the Maharaja
Mysore, Law Department
Bangalore

Dated 25. 9. 29
Despatched

Received

General No.
No. 167

Enclosure No. One

Subject. Suit against
A.R. Keshava Murthy: Ex
defaulter.

Sir,

In continuation of
my letter no 152 dated
17-9-29, I have the hon
to submit the draft
plaint for your approva
The facts detailed in the
plaint have been gathere
from the file of Corre
spondence maintained
the Mysore Debenture Ex
Office. The exact date
deposit of the Govt of
India Promissory note
may be available in the
Taluk Office, Mysore an

: reference has been made by the Attorney
General of Jersey to furnish the same. I
request that the draft may be perused
and returned with such alteration
and modifications as you deem proper

I have the honor to be
Sir
Your most obedient servant

[signature]
Public Prosecutor.
Royal Victoria.

Appendix F G—1

SUBJECT.....

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Diary No. of letter replied to.....

Section Law

File No. 2-28

Serial No. 60.

No. 1959 (1)

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecutor

Negombo

Date of issue..... 4.10.29

Signed by.....

Sir,

With reference to
letter No: 167 dated 25
1929 forwarding for
a draft plaint against
Mr A. R. Kesavanayagam
I have the honour to
that the same is in order
subject to the following
remarks.

1) In para 3 line 3 the
date mentioned ought to be
30-6-1924 & not 30-6-1920

List of enclosures.....

Copied by.....

Examined by.....

over

WD068—GPB—20,000—1-8-29

2) Para 13 mentions the valuation of the suit for purposes of jurisdiction and Court fee. Since the suit is only for a declaration of P's title to the securities and for the consequential relief, viz the execution of the proper endorsement the subject matter of the suit is the securities and the value for purposes of jurisdiction ought to be the value of the securities, i.e. Rs 60000/-.

Court fee is to be paid according to Sec 4 Cl iv (c) of the Court fee Regulation under which the fee depends on the amount at which the consequential relief is valued in the plaint ~~and since in the present case such relief cannot be valued, the fee of Rs 50/- as~~

C 139
P

WD 546—GPB—50,000—4-9-28

192

From
The Public Prosecutor
Mysore Division
Mysore

To
The Secretary to Government
of His Highness the
Maharaja of Mysore
Camp Mysore

Dated 2-4

Despatched 13-10-1929

Received

General No.
No. 204

Enclosure No.

Sir,

I have the honor to submit the final draft of the plaint in the proposed suit against Mr A. R. Krishna Reddiar

The Changes suggested in your letter No. 1959 dated 4-10-1929 are duly effected in the draft submitted herewith -

I have the honor to request that the plaint may be approved and returned after obtaining the signature of the Chief Secretary -

I have the honor to be
Sir
Your most obedient servant

Public Prosecutor Mysore State

Appendix F G—1

SUBJECT.....

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Diary No. of letter replied to.....

Section

File No.

Serial No.

No. 2124

General and Revenue Secretariat

( )

the 192

To

The Public Prosecutor

Mysore

Date of issue 19.10.29

Signed by

Sir, With reference to your letter No 2024 of the 13th instant, I have the honour to return herewith the Vakalat and plaint in the suit against one A. R. Kesava Murthy, duly signed by me as Chief Secretary to Government. The suit may be filed in Court as soon as the Courts reopen after the Dasara holidays, and the further progress of the same intimated to me as usual.

I have etc

over

List of enclosures.....

Copied by

Examined by.....

WD 063—GPB—20,000—1-8-29

From

The Public Board
Mysore Province

To

The Secretary to
Govt of Mysore State,
Nandidurg

Dated

Despatched 26.10.29 Mysore (Cantt)

Received Bangalore

General No.

No. 217

Enclosure No. Nil

Sir,

With reference
to your letter No
2124 (2) Law 272
dated 18.10.29
I have the hono